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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1974
No. _____

Joseph M. Rice
Petitioner,

v.

United States of America
Respondent.

PETITION FOR WRIT OF CERTIORARI, OR OTHER APPROPRIATE WRIT, TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Petitioner, Joseph M. Rice, prays that a writ of certiorari, or other appropriate writ, issue to review the judgment of the United States Court of Customs and Patent Appeals in the matter of the decision rendered March 21, 1974.

OPINIONS BELOW

Patent application serial No. 740 649 rejected Dec 12, 1969 (mailed Jan 19, 1970) under USC 102 as being "clearly anticipated" by either Browne, Veaux, de Boer, et al, or Van der Meulen.

Final rejection in Patent Office August 18, 1970, under USC 102 and 112 as being anticipated by either Kidd, Van der Meulen or Jenkins.

Rejected by Board of Appeals May 1, 1972 pro se before Andrews, Strader, and Bennett, Examiners-in-chief-claims 1 and 2 do not satisfy requirements of USC 112 and claims 1 and 2 anticipated by either Kidd, Van der Meulen or Jenkins. Found free of reversible error.

Request granted for re-examination but denied making any change therein. Board stated they had no authority to consider claims not entered by the examiner.

Decision of Board affirmed by U.S. Court of Customs & Patent Appeals March 21, 1974, rightful claims not before the Board and not acted upon.

Review requested and a 10-page brief in support submitted. May 9th petition denied. Mandate to be issued May 17, 1974.

Stay of mandate extended until May 28th. Hurriedly wrote petition to Supreme Court and submitted same June 3rd.

Stay mandate continued until final disposition of the case by Supreme Court.

Petition returned by Court along with $100 check. Printed and bound 40 copies of new brief and submitted on August 5th. All copies returned along with fee again because I had used single spaced ELITE type. August 14th began printing 40 new copies as per suggestion I use PICA and double space.

STATEMENT OF THE CASE

Patent application entered in records June 27, 1968, and attorneys were: Clarence A. O'Brien & Harvey B. Jacobson. All necessary fees were paid. After a delay of 17 months I complained to the Patent attorneys, and a letter dated October 20, 1969, stated in part:

"However, there is a procedure whereby the examination of application can be accelerated by way of a petition to the Commissioner of Patents to make the exam special. Should the application(petition) be granted, the Patent Office will initially examine the application out of its chronological turn and prosecution of the case can be concluded in approximately three to four months from the date the petition is granted...the charge incident to the proposed 'petition to make special' plus prosecution of the application to a conclusion before the Patent Office will be #350.00."

I did not understand this "petition to make special" and on Feb 14th of 1970 I requested permission to prosecute to a conclusion my own patent application. My letter appended.

On January 19th of 1970 the first rejection was suffered under the original nine (9) claims. Examiner told me if I were to re-word the two claims mentioned in the nine claims, they would consitute two separate inventions. I declined for two reasons: I had my hands full with this application and secondly I feared an interference suit from an unknown source which would deplete my energies and resources.

My letter of March 9th of 1970 attached to my two new claims appended. Examiners Office Action of April 30, 1970, indicated he had not received my new claims even though I had mailed them as a registered letter and they were signed for at the Patent Office. (this occured four times!"

I then sent two copies immediately. On December of 1970 I sent instrustions and

and four (4) new claims in the form of an amendment. I also requested they re-number the claims as it was their duty to do so.

In this interval I was under the final rejection and a muddled situation developed which resulted in my case being taken to the Appeals Board without my new claims attached. I was within the time interval to modify them and did not realize my new claims were not before the Board until 18 months later when I, at that time, complained to the Commissioner of Patents that none of my letters were acknowledged.

In a three (3) page letter dated jul 28, 1972, the assistant Commissioner acknowledged all my letters at one time (after Appeal Board decision) and stated on page 1 :

> "...further, appellant did not at any time until after the decision of the Board call to the attention of the

attention of the Patent Office the fact that no response to the proposed amendment dated Dece er 29th of 1970 had been received. Accordingly it does not appear that appellant's appeal was in any way prejudiced by the non-entry of his proposed amendment."

NOTE: THIS IS THE CRUX OF THE WHOLE MATTER!

I remind this Court that I did not know the Board had not received the amendment, so how could I call attention to the non-entry?

Furthermore, I claim that I did not know and that my case was highly prejudiced. The appended letter will indicate a clerical error and other pertinent points in my favor.

The gist of all my writings after this episode presented a very basic argument which all the various courts have ignored. They have evaded my argument entirely aside from the matter of the claims.

In other words because of a simple error

and lack of an understanding of legal maneuvers on my part, the final rejection by the Patent Office was stayed on the original assumption. Their minds are closed on a simple formality and the case has every need to be completely reviewed.

I remind all concerned, also, that my first rejection was suffered because my claim one (1) was not in a one-sentence structure. (no rule on this in any book)

QUESTIONS PRESENTED

1. Amendments to my claims after first rejection were not entered due to a clerical error and said error was compounded by ambiguity in rules of the Court stating one set of laws for the layman(due to omission) and another set of laws which would allow an attorney to modify the claims to the Patent Examiner's satisfaction.

2. The Patent Office, et al,had not recog-

nized my plea in my statement to the effect that I objected to patents being imported from one subtitle to another and not applicable to my application. Their rejection being couched in such a language that stated: "...regardless if cited inventions were not in the same category or subtitle the cited patents 'suggested' my application..."(my words to describe t their thoughts.)

My argument has always been that if the cited inventions are <u>not</u> radio in that they cannot be radiated through space, then they cannot be used as anticipating inventions.

Further, my patent specifically states: "...and pertaining in particular to systems called Amplitude Modulation..."(claim 1). This exclude all patents which are not "AM" or cannot be radiated through space. The Courts have totally ignored my pleas

and have not in any manner responded with any argument or rebuttal of this statement.

3. The Patent Office et al have persistently ignored the correct definition of the word "carrier" which is of prime importance to my case. The word "carrier" has many different meanings to many different people depending upon their walk of life. The Patent Office et al persists in their definition that a "carrier" must convey, or carry, something else.(they cited Webster's definition to me and this does not fit radio terminology.) Such is not the case in my invention. I had adherred to the word as it was understood 50-years ago. Today, 1974, we know that the object we called the "carrier" in systems called "AM" radio does not carry. It is evident no intelligent decision can ever be rendered until we agree on semantics.

4. My patent application relies wholly on my new theories on radio. The patent office has constantly stated that:"...regardless of new theories, the idea is still present." To me that is as ridiculous as saying that the man who first used a whale-oil lamp anticipated the electric bulb! (different) principles altogether, but the idea of light is the same!) It is as unworthy an argument as stating that the 33 sons and 28 daughters of Eve and Adam anticipated all that we do today!

5. The Patent Office et al have not recognized exactly what my invention is. They have based all their arguments on the rather simple diodes and resistors in the switching circuit and in not seeing the true invention lies in my new theories and their application to the whole radio wave.

I also remind this Court that the thousands upon thousands of different circuits used in radio are made up in the main of only four components; condensers, resistors, coils, and amplifying devices. Circuits can easily resemble one another, and yet be vastly different in their concept and operation. No other circuit will do what my simplified circuit will do.

The circuit, and its operation, is the result of my dissection of the invisible radio wave. I used intuitive powers, the art of inductive reasoning, and the 40 years of practical observation of the whole radio scene in my working career.

All this enabled me to label various parts of a radio wave and to reason what to do with them. The actual diodes, etc., are only ancillary to the actual invention- not the invention as the Courts say.

6. The failure of the Patent Office to understand my claim one (1) is caused by total ignorance of radio engineering. Two persons, such as myself and the courts, are never going to reach an agreement if one party is oriented toward the legal side and the other toward matters technical. My claim one (1) is simple in language, but complex in import. An anology to this simple, direct, broad claim resides in the fact that mankind explains the simple dot (.) in the most complex language, vis. algebra, geometry, etc., and the most complex item of all, the human brain, in the most simple terms!

7. Even a cursory review of my case will indicate that only the original arguments have been heard and none of the real issues have been explored. All three (3) courts have only reiterated and never deviated

from the first rejection by the Patent office. This means the only difference between the Patent Office and the other courts is in the number of judges. The only real difference in arguments occured after the U.S. CCPA read my brief they stated that one of the inventions could also be connected to a telephone wire(Van der Meulen) My claim one (1) mentions the use of wires too. My rebuttal pointed out that <u>any</u> circuit cited against mine must first qualify (as my claim states) to be first a system that is known as AM. I had also pointed out that anything can be connected to a telephone wire, but this does not make it in the same line of thought as mine at all.

To me it matters little if one ignorant judge (in matters technical),

judges my invention, or three such persons, or even five as in the USCCPA. Sheer numbers do not lend validity to these decisions. It is self-evident with only a perusal of my case that not one word of my arguments have registered and furthermore I have been totally ignored as not worthy to be heard. They sweep my technical truths under the rug, so to speak, and cover them with legal terminology which have no place in an argument of this sort.

I now feel the "awesome power" of the federal courts. They are beholden to no one. They not only have the first say, but the last one as well. If there were equal justice then it would be fitting and proper I should give the patent office two (2) rejects to prove I am wrong! As it is the Patent Office can twice reject me for not dotting an I or crossing a T and I am through! IS THIS JUSTICE?

Appeals Board and the USCCPA are not necessary and have acted in a parrot-like fashion. Not one word of argument has been presented in over six years to combat my assertion that prior inventions must conform to a reasonable definition of having the property to be radiated through space.

Time after time, the courts have only given me a few hours to respond or else I would lose the entire case. Dozens of examples can be shown where they have used this technique. As a matter of fact I only had three days to write my first petition to this court! Yet, with all the hurry-up they impose on me, they take as long as two (2) years to even answer my letters. I have the same feeling I would have if I were to play baseball with another team when they owned the ball, bat, diamond, and gave me two strikes and "I'm out" before I ever got to bat!

NATIONAL CONCERN

Permit me to touch briefly on a few points which should be of National interest. When I first conceived this idea I dwelt for many months on just what to name it, I decided that "AM STEREO SYSTEM" would embrace the idea. As you are aware there are many uses for systems called AMPLITUDE MODULATION. This system is used in facsimile, television, entertainment broadcasting, both domestic and international, navigation, space exploration, and by the military.

The un-obviousness of my invention resides in simple arithmetic, and when the monetary value of the radio stations themselves is considered plus the revenue to be derived from the public in new devices it surely seems reasonable that if my system is obvious it would surely have been utilized before this!

In the United States there are approximately 5100 AM radio stations. Some of the

clear channel stations have a net worth of about $20,000,000. The smallest station might be worth, say, $500,000. Millions upon millions of AM radios are in the hands of the public and they buy more and more everyday. The value to the country and to the industry is beyond me to know or tell. Needless to say the AM radio stations would enjoy prestige if they could broadcast stereo and their business stance would be enhanced and made more competitive, plus the added stimuli (beyond my patent protection) to the record industry to supply more records.

I envision using the sytem of mine to reduce the bandwidth of television from its present width of 6MHz(6,000,000 cycles) to a value of about 100,000 cycles. This means in practical terms that at least 60 more stations could be accomodated in the same space that one now occupies. The present VHF band which includes channels 2 through 13 would be increased to 720 channels. This

it is evident that these additional facilities greatly enhance the economic, educational, cultural, and entertainment aspects of our present system. In the UHF band(14-84) we would increase the number of channels from the present 70 to 4200 channels. The dollar value alone of the added transmitters, bldgs, studios, personnel, and other added avenues is again beyond my scope of knowledge.

My basic idea encompasses all these, but the realization of their practicability will require the resources of many and diverse research laboratories for a long period.

The value to the military would be entirely up to their research skills and imaginations. Wherever there is a need for a plurality of information to be communicated in a narrow space, then it should prove of value. There is also no doubt in my mind that navigation falls within the ken of my disclosure too.

In the field of international broadcasting

it can be used when it is coupled with my new theories on radio reception to abolish what is commonly termed selective fading.

I believe also that the bandwidth of AM radio stations can be reduced and thus adding more channels to the present 107 channels spread from 550 to 1600 KHz.

I envision using my invention in the field of space exploration. At present there is so much interference from infra-red and other cosmic radiations plus the "garbage" from many other sources it is impossible to penetrate our outer space. Even with sophisicated radio-telescopes the range for intelligence-gathering is restricted to an impractical value. The ability to select only the desired signal from all the rest of the interference is embraced in my claim one(1). All other signals are "washed" out.

To reduce this invention of mine to any practical use is, as I stated, a job for a diverse group of technicians and engineers.

I'm sure all will agree that if this invention were obvious it certainly would have been put to use before this. It is so un-obvious that only a very few persons understand what I've been saying and doing. The few who do understand are either physicist or design engineers. It surely is not a step-by-step deal nor one that only a mechanic would recognize.

SUMMATION OF MY ARGUMENTS

In explaining the statement made in the "Questions Presented" in item No. 1 on this paper I further state that two different conditions exist in the pursuance of a patent. One condition is where a Patent Attorney is retained and another when one is not. I adherred to the green patent book of rules for correct procedures to follow. After my second rejection(final) I checked on page No. 19:"...applicant's response is limited to appeal in the case of rejection of any

claim and further amendment is restricted."

The above statement of the rules is in error because it omits several openings which an attorney would have access to.

Over the years of the operation of the Patent Office there has developed a condition whereby the patent attorneys and the examiners have developed their own customs and practices to the exclusion of those of us who must obey only the rules as published in the book. This is not a healthy situation and seems to be contrary to the axiom-A government of laws, and not of men.

In one law book published by the Commerce department in November of 1965 it says under rule 132, page 23:..."Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement together with such information and references as may be useful in judging

of the propriety of continuing the prosecution of his application; and if after receiving such notice,(I did not) the applicant shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention..."

In another law book I found even further statements which indicate I was not treated fairly. This one clearly shows an attorney would HAVE privileges I would not enjoy and he would have the right to amend where I was denied equal rights.

ACTION AFTER FINAL REJECTION: "When a final rejection in an application is received by andattorney, he may, of course, make any amendment which places the application in condition for allowance..."(page 138 in book written by a Mr. Toulmin.)

At this time I call attention to the brief from the Commissioner of Patents in reply to my brief where it is stated on page

7 line 1:"...denied ultimate judical review of that decision may only be had in District Court..." This is in direct contradiction to the rules as stated on page 26 of the blue Patent Book:"

141. "Appeal to Court of Customs & Patent Appeals-an applicant dissatisfied with the decision of the Board of Appeals may appeal to the U.S. Court of Customs & Patent Appeals thereby waiving his right to proceed under section 145 of this title."

The above simply means that my decision was to take my case before the USCCPA and in so doing I knew I had waived my right to justice before any civil court.

This muddled situation, all caused by needless delay, and a clerical error, and compounded by ambiguous rules have made it necessary to petition this Court. I have done everything possible to comply with every rule of the Patent Office. It is

difficult for me to understand this delay in prosecution on a single technicality.

All of my writings over the years have stressed the need for an agreement on definitions of certain words. The most vital word to even a basic understanding of my invention is the word CARRIER. I requested Mr. Harold Kassens, chief Rules & Standards division of FCC to supply me with an up-to-date definition which he did and it appears in the transcript of record and in this appendix.

Legal arguments are based upon words and their meanings. There can be no intelligent decisions made if there is no agreement on the meaning of words. Words which mean one thing in one walk of life, mean entirely something else when applied to another.

In today's world we cannot lump all the sciences of electricity, electronics, and radio itself, into one common title as the courts' have consistently done in my case.

Radio itself has further divisions of sophistry which make each branch:AM,FM, TELEGRAPHY, FAX, TV, etc., vastly different from each other.

The heterogeneity of our complicated modern world requires that each branch of science have a vocabulary of its own. If I were to divide all of our accumulated knowledge, which could be called ELECTRICITY, for want of a better word, into three main categories we could come up with:

1. ELECTRICITY
2. ELECTRONICS
3. RADIO

It will become obvious we cannot import words(as the courts have done) from one branch into another and still retain the correct meanings.

I have persistently adherred to the idea in all my writings that I am only talking about systems which are defined as Amplitude Modulation. There are many facets to the electronic industry alone and many also to

radio. Each category has distinctive and unique characteristics which are common only to themselves. The list is endless of the devices which might fall into one of the three categories. There are literally hundreds we could list under each of the three. This is not necessary to get my meaning across.

The contrast in meanings of words when imported from one category to another is startling. The particular word which I wish to dwell on is the word CARRIER.

A person versed in electricity would use the word CARRIER when he means the iron wire which is used to hold up the more-fragile current-carrying copper wire. A person, on the other hand, versed in ELECTRONICS would use the word CARRIER to mean the current carrying ability of solid-state devices such as transistors. Solid-state terminology does not accept the older electron theory of current flow,

instead, solid-state is explained by an invisible chemistry-action phenomena which says in essence that current flow is accomplished by "holes" which carry current. These "holes" are spoken of as CARRIERS. Thus we have two distinct definitions already.

The phenomonon of WIRELESS (radio) is unique from the other two branches mentioned in that it possesses the ability to be radiated through space. Even though common mathematical laws such as Ohms Law, Kirchoff's Laws, and many more, are common to all three branches, and even though radio relies upon the laws of electricity and electronics for its' operation, there is a sharp division in practical theory when applied to radio. When waves of etheric force are emitted from an antenna and are caused to traverse an unknown substance(not air) this device then becomes vastly different in behavior and bears no relation-

ship to any other branch of science at this point. Radio exist separately from any other science-with its' own laws!

Radio itself is further divided when the different processes of modulation are applied. Each category has its own unique nomenclature and words have far different meanings when applied to any one of them. These words are so different that it is impossible to import them from one category to another and retain the same meaning.

The above lends sustenance to my arguments that if two of the cited inventions(Kidd and Van der Meulen) are <u>not</u> radio in that they cannot be radiated through space, and received, and if the third cited invention(Jenkins) is one known as Frequency Modulation (FM) then it surely follows that none of these can be used or applied to my thinking.

My use of the word CARRIER means exactly what is stated on pages 62-63 of the transcript of record-and no other meaning

can be imported. FCC letter to that effect appended.

I therefore cannot see how any just decision can ever be rendered if there is no understanding of my invention. I have diligently tried to make it easy to comprehend, and I'm sure if correct definitions to certain words were applied the truth will be seen.

This problem due to a lack of knowledge of a given subject must have confronted the court before. I make the point that I could have very easily camouflaged my over-simplified circuit in a maze of electronic double-talk and no one would have been the wiser. If I had done this at first I am now sure I would have obtained the patent long ago.

It was Thomas Edison, who probably knew more about the workings of the Patent Office, who once stated in a letter some facts which are germane to my own case.

Mr. Edison's statement follows:

"Furthermore, it seems to me that scientific disputes should be decided by some court containing at least one or two scientific men-men capable of comprehending the difficulties of its accomplishment,-if justice is ever to be given an inventor. And I think also, that this court should have the power to summon before it and examine any recognized expert in the special art, who might be able to testify to facts for or against the patent, instead of trying to gather the truth from the tedious essays of hired experts, whose depositions are really nothing but sworn statements as arguments.

"The real gist of patent suits is generally very simple. and I have no doubt that any judge of fair intelligence, assisted by one or more scientific advisors could in a couple of days at the most examine all the necessary witnesses; hear all the necessary arguments, and actually decide an ordinary patent suit in a way that would more nearly be just, than can now be done..."

Mr. Edison also stated these salient points which I deem pertinent to my own case:

"...but I think the whole trouble lies with the system in vogue with the Federal Judges, with but few exceptions, do not understand complicated scientific questions.

"...to secure uniformity in the several Federal Circuits and correct errors, it has been proposed to establish a central court of patent appeals in Washington, This

I believe in; but this court should also contain at least two scientific men, who would not be blind to the sophistry of paid experts. Men whose inventions would have created wealth for many..."

I have pointed out that the cited inventions of Kidd and Van der Meulen are not radio and in closing I would like to say that the third cited invention being that of Jenkins has been shown to countless radio engineers and without exception they all agree this is definitely FM-not AM.

This is an interesting invention because it was applied for in 1926 and yet the Patent Office issued a patent to Major Armstron in 1934 for a system of FM in the year 1934-nine years later! Which only proves that all the clerks and librarians in the world are valueless without a thorough knowledge of the.. history of a given subject. Beyond a shadow of a doubt it is Jenkins who.. should get the credit for Frequency modulation and not Major Armstrong!

In the wording of my claims I have tried to not monopolize the entire field and yet hold on to the basic idea. Recognizing always that the basic ingredient of free enterprise is to give free rein for expression of ideas. Thus, others will see an opportunity for themselves.

I am only trying to unlock the door, it is up to the Court to open it.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a Writ of Certiorari should be granted and if so upon review my five claims which are appended should be rightfully entered in my specifications and that the following three (3) cited inventions be forever removed as being anticipatory of my invention:

KIDD.....2,921,981..Jan 19,1960-NOT RADIO
JENKINS.....1,914,570..Jun20,1933 -NOT "AM"
VAN DER MEULEN2,336,276..Dec 7,1943 -NOT RADIO

Joseph M. Rice
August 20, 1974

JOE RICE
W4RHZ
916 WESTERN AVENUE
COVINGTON, KY. 41011

APPENDIX

APPENDIX

APPENDIX page 1.
(reproduction of letter)

Feb. 14, 1970

Commissioner of Patents
Washington, D.C.

Dear Sir:

Requesting permission to prosecute to a conclusion my own patent application for a System of Stereo called "Time Division."

Former attorneys were:
Clarence A. O'Brien
&
Harvey B. Jacobson

MY COURSE OF ACTION WILL BE:

1. Add clearer english to the abstract.
2. Deletion of all nine(9) claims.
3. Add two(2) concise claims in my own words.
4. Reply to examiner's request for comments upon four (4) previous patents closely related but not the same.

Respectfully,

Joseph M. Rice

* * * * * * * * *

MY FIRST NEW CLAIMS

WHAT IS CLAIMED AS NEW IS AS FOLLOWS:

1.

A system of switching simultaneously a plurality of information such as needed for the transmission and reception of stereo using the carrier itself for the synchronizing of the receiver with the transmitter, and pertaining in particular to amplitude modulation systems of any frequency whether caused to be radiated as electromagnetic waves or transmitted over metallic circuits such as telephone or co-axial cable where more than one set of data, signals, audio material,

or other intelligence is to be keyed,gated, or otherwise switched in synchronism for deciphering into its' component parts.
2.

A system of stereo broadcasting which could be easily adopted by the Federal Communications Commission for the standard broadcast band which is 535-1600 KHz and which system is full compatible with existing receiving apparatus and which also would not make obsolete any existing transmitters, frequency monitors, modulation monitors, phase monitors or effect the annual proof-of-performance measurements of all broadcasting stations, and for which new rules could be made by petitioning FCC under present rule-making procedures as set up by FCC.

* * * * *

NOTE:

Patent Office objected to claim two in that it was not pertinent to claims, but rather was only a statement of its use.

I agreed with them and sent four(4) new claims to be added to claim one(1) of above.

I point out this is the recommended procedure with the Patent Office to operate in this manner. Their rules state that amendments can only be made as long as the one independent claim is retained.

I also point out to this Court that when amendments to claims are submitted the numbering must be a continuation of the existing claims: thus, my four (4) new claims would become 3,4,5 and 6. It is the duty of the clerk of the Patent Office to re-number them so that my claim 1 remains claim 1, and claim 2 is deleted, and my new claim 3 becomes claims 2 etc.

REPRODUCTION OF MY LETTER
RE: NEW CLAIMS

December 29, 1970

Commissioner of Patents
Washington, D.C.

Dear Sir:

RE- 740 649-D'Amico-AM Stereo System-Joseph M. Rice

Enclosed are amendments to my claims. Application date for reply is January 18, 1971. Under separate cover is my filing fee for an appeal with appropriate filing fee enclosed.

Will you please do the following before I send in my brief ~~in supplement~~ to my other arguments now at your office?

1. retain claim #1 as it is.
2. delete claim #2
3. add the enclosed claims in the form of an amendment. It is my understanding you will change numbering so that the enclosed #3 becomes #2 etc.

Sincerely Yours,

Joseph M. Rice

* * * * * * * * *

AMENDMENTS IN QUESTION

3.

The system of claim 1 discloses my realization that the carrier in any system called amplitude modulation exists separately and is not affected by the modulation process and therefore can be used as a switching device

to maintain the transmitter switching of a plurality of audio information in synchronism with the switching of any number of receivers so that either distinct left and right channels can be maintained through any transmission path, or separate spacial information can be transmitted without switching and these combined in a matrix circuit to separate in a known manner.

4.

A system using claim 3 on a normal amplitude modulated transmitter to transmit audio information derived from at least two audio sources, comprising means for transmitting and receiving said transmitted signals at a predetermined carrier frequency, means of amplitude modulating said transmitter with said audio information, said audio information being switched by the carrier, means for demodulating the modulated transmitted signal to reproduce the original audio information, means to separate the received audio information into at least two paths in accordance with the transmitted audio sources by using the said carrier wave alternations to operate a polarity sensitive switching device.

5.

A system of claim 4 comprising a transmitter composed of means to generate the carrier frequency, means to amplify to any desired power output, means to amplitude modulate said carrier amplifier, means to sample said carrier generator frequency in a stage before modulation, means having an input and an output, a carrier-controlled switching circuit interposingly connected between said channels to said modulator input, modulator amplifier means connecting said modulator output and said carrier signal generator to produce an amplitude modulated transmitted signal.

6.

A system of claim 4 comprising a receiver capable of receiving said transmitted signal, means to detect said amplitude modulated signal, means to convert detected signal to the original transmitted audio information, said detector means having an output, first and second audio output channels, a carrier signal-controlled switching circuit interposingly connected between said detector output and said first and second audio output channels to alternately connect said detector output to said audio channels to synchronize with the original audio information at the transmitter.

* * * * * * * *

SUMMARY ACTION

paper No. 12

FINAL REJECTION
PATENT OFFICE
CLAIMS 1, 2.....are rejected

THIS ACTION IS MADE FINAL

ART UNIT 12
serial No. 740 649

Claims 1 and 2 are rejected under 35 USC 102 as anticipated by Van der Meulen. Applicant in his response argued that the Van der Meulen patent is based on a false premise. Regardless of whether or not recent theory has dispelled the old concept of modulating the carrier the facts are that Van der Meulen discloses an invention in which the receiver(not necessarily a radio receiver) utilizes the carrier to switch information into two separate(NOTE: THIS IS NOT THE CARRIER VAN DER MEULEN IS TALKING ABOUT) and distinct channels. The particular carrier frequency used is of no consequence as the main idea is present. The

premise may have been wrong however the invention could operate very well based on the present day accepted theories. It is noted that patents are granted on a technical basis for structure or methods without regard to F.C.C. regulations or laws.

Claims 1 and 2 are rejected under 35 USC 102 as anticipatei by etiher Kidd or Jenkins, both of these inventors modulate(please check definition of modulation process-inserted by appellant) positive cycles of the carrier with one signal and the negative cycles of the carrier with another signal(impossible to do this-appellant). Jenkins differs slightly in obtaining his carrier as he originally starts with two carriers, however, he eventually winds up with one carrier.(check definition-appellant) to switch diodes at the receiver. Applicant refers to this process as synchronizing however this is not technically correct. Applicant's invention is a zero crossing detector using the carrier(check definition of carrier-app.) for switching. Synchronizing, as defined in the Encyclopedic Dictionary of Electronics and Nuclear engineering, is the maintainence of predetermined relations,e.g. speed between various systems and components.

Claims 1 and 2 are rejected under 35 USC 112 for containing informalities. The claims are neither method nor apparatus claims. That is they neither specify a method for arrving at a particular result nor do they define any apparatus to carry out the idea present. An example of a method claim appears in Van der Meulen while an example of an apparatus claim appears in Kidd.

THIS ACTION IS MADE FINAL

SIGNED BY K.L.CLAFFY-exam.,group art 232

excerpts of appellant's arguments.

NOTE: see my letter pages 57 and 58 transcript of records in reply to the foregoing examiner's statements.

NOTE: see my reply to Jenkins on page 43 of transcript of records.

NOTE: see my reply to Van der Meulen patent of pages 46,47,48 and 49 of transcript of record.

NOTE: see pages 38,39,40,41 and 42 for reply to W.C.Kidd patent of transcript of record.

In my arguments I had pointed out that none of the three cited patents could qualify by any known definition as being AM. Kidd and Van der meulen are not any type of modulation, rather, simply a gating or switching circuit. The invention of Jenkins is positively one known as Frequency Modulation.

NOTE: see page 30 of transcript for definition of MODULATION.

* * * * * * * * *

paper No. 33
Appeal No. 085-03
IN THE U.S. PATENT OFFICE
BEFORE THE BOARD OF APPEALS

ex parte-Joseph M. Rice
serial No. 740 649 AM Stereo System
Joseph M. Rice- pro se
before Andrews, Strader and Bennett,
Examiner's in Chief.
Strader, Examiner-in-chief
THIS IS AN APPEAL FROM THE FINAL REJECTION OF CLAIMS 1 AND 2,ALL THE CLAIMS IN THE CASE.

DECISION OF APPEALS BOARD
May 1, 1972

Claims 1 and 2 stand finally rejected under 35 USC 112 as failing to particularly point out and distinctly claim the invention. The examiner contends that the claims are "vague and hard to follow in that they neither recite a means nor a step for performing a specified function."

We agree with the examiner. Appellant does not claim a series of steps which form the method of his invention, nor does he claim the apparatus which he considers to be his invention. Rather, appellant appears to claim the purpose of his invention. Appellant declares that he should have the right to claim his invention in the manner which he thinks best; however, we must remind the appellant that because the claims determine the invention for which an applicant seeks patent protection, the claims must clearly point out the method or apparatus that an applicant chooses for implementing the purpose of his invention. A mere statement of the purpose of the invention and its advantages over the prior art is not sufficient.

We also remind appellant that the language of the claims in a pending application must be given the broadest reasonable interpretation. Any prior art method or apparatus which is described by an applicant's claim language(given the broadest reasonable interpretation) is considered to be anticipatory of that claimed invention, and the applicant is therefore not entitled to patent protection of that claim. We are of the opinion that appellant's claims 1 and 2 do not clearly set forth the method or apparatus which

appellant discloses as his invention. We will sustain the examiner in his holding that claims 1 and 2 do not satisfy the requirements of the second paragraph of 35 USC 112.

Claims 1 and 2 stand rejected under 35 USC 103 as anticipated by Kidd, Jenkins, or Van der Meulen. The examiner contends that these patents disclose receivers which extract the information modulated (ed. wrong terms) on the carrier by using the carrier wave to synchronize the receiving circuits with the transmitting circuits. The examiner submits that the synchronizing is accomplished by the carrier's controlling the switching of devices in the receiver in the same manner that similar devices are switched in the transmitter. We are of the opinion that claims 1 and 2, in that they recite merely that intelligence is gated or otherwise switched in synchronism by the carrier for deciphering the signal into its component parts, are anticipated by any one of the patents to Kidd, for example, Jenkins, and Van der Meulen. The patent of Kidd, for example, shows a transmitter in which the inputs No. 1 and No. 2 are alternately clamped to ground by the action of oscillator 7 and diodes 5 and 6. The portions of signals No. 1 and No. 2 which are not clamped to ground are then produced alternately at the output 18. Because the input No. 1 must be positively biased and input No. 2 negatively biased for the apparatus to operate as described the output signal at terminal 18 will include alternating positive and negative peaks which correspond to the half-cycles of oscillator 7. The signal

can thus be considered to be an amplitude modulated carrier(ed. NOWAY!) of the frequency of oscillator 7, wherein the amplitude of the positive peaks are determined by input signal No. 1, and the negative peaks by input signal No. 2. At the receiver these peaks are gated by diodes 21 and 22, causing line 21 to follow the negative peaks and line 24 the positive peaks. The diodes are thus switching at the rate determined by the carrier(ed. see definition) frequency.

In figure 3 of the patent of Van der Meulen, diodes 21 and 42 perform the same gating or switching function. Tubes d2 and D3 in Figure 2 of Jenkins similarily perform that switching function.

We have carefully considered the entire record and we are not convinced thereby of reversible error in the examiner's holding that claims 1 and 2 do not satisfy the requirement of 35 USC 112, and that claims 1 and 2 are anticipated by any one of the patents of Kidd, Jenkins, and Van der Meulen.

THE DECISION OF THE EXAMINER IS AFFIRMED

* * * * * * * * *

June 13, 1972

BEFORE THE BOARD OF APPEALS
ex parte Joseph M. Rice

Joseph M. Rice pro se

Before Andrews, Strader and Bennett, Examiner's -in-chief.
Strader, Examiner-in-chief.

REQUEST FOR RECONSIDERATION

REQUEST FOR RECONSIDERATION
TO THE BOARD OF APPEALS

ANSWER FROM BOARD OF APPEALS:

"...This Board has no authority to consider claims not entered by the examiner and not mentioned in the notice of appeal and therefore only claim 1 and 2 were properly before us."

"We have carefully considered our decision in light of appellant's comments and the only error we note therein is the inadvertent omission of the word 'parts' after 'component' in the reproduction of claim 1."

"The request is granted to the extent that we have re-considered our decision but is denied as to making any change therein."

* * * * * * * * *

UNITED STATES COURT OF CUSTOMS & PATENT APPEALS

IN THE MATTER OF THE APPLICATION
OF
JOSEPH M. RICE

appeal No.9181
serial 740 649

DECIDE:Mar 21,1974

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per curiam.

DECISION

The decision of the Board of Appeals is affirmed.

OPINION OF THE BOARD OF APPEALS

The rejection of claims 1 and 2 under 35 USC 102 on any one of the Kidd, Jenkins, and Van der Meulen patents is found free of any reversible error. Each reference discloses"(A) system of switching simultaneously a plurality of information such as is needed for the transmission and reception of stereo using the carrier itself for the synchronizing of the receiver with the transmitter." as stated in the first portion of claim 1. The broad terminology set out in the remainder of claim 1 and in dependent claim 2 also has not been shown to distinguish over the references.

"...THE OTHER CLAIMS, SUBMITTED BY APPELLANT AFTER FINAL REJECTION ARE NOT BEFORE US BECAUSE THE BOARD DID NOT ACT ON THEM AND THE ASSISTANT COMMISSIONER DENIED A PETITION FOR THEIR ENTRY IN THE APPLICATION.

* * * * * * * * *

REPRODUCTION OF A THREE PAGE LETTER FROM ASSISTANT COMMISSIONER OF PATENTS-IN PART:

"...Appellant's amendment dated December 29, 1970, and received by the Patent Office on January 4, 1971, apparently was not called to the examiner's attention, as it was not received by group 230 until sometime shortly before the examiner's answer was actually mailed. Through inadvertence, that proposed amendment was not acknowledged in any way by the Patent Office. We apologize for this lack of earlier acknowledgment and action on the proposed amendment."

* * * * * * * * *

Reproduction of a letter from FCC. Full text appears on page 59 along with my letter on page 57 of the transxript of records.

Harold Kassens,
Chief, Rules & Standards Division
Broadcast Bureau
FCC
Washington, D.C.

November 30, 1971

Mr. Joseph M. Rice:

The terms " assigned frequency" and characteristic frequency used in the above definition, are defined as follows:

ASSIGNED FREQUENCY:

The centre of the frequency band assigned to a station.

CHARACTERISTIC FREQUENCY:

A frequency which can be easily identified and measured in a given emission.

CARRIER:

While the term "carrier" is employed in a number of regulations, it is not specifically defined therein.

CARRIER DEFINITION:

In a frequency stablized system, the sinuosoidal component of a modulated wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal, or a wave generated locally at the receiving terminal which, when combined with the sidebands in a suitable detector, produces the modulated wave."

REFERENCE FREQUENCY:

"Is not a term carried forward in the Commission's rules, but "carrier" is defined in Section 2.1 of our rules, as above."

* * * * * * * * *

June 13, 1972

IN THE UNITED STATES PATENT OFFICE
Before the Board of Appeals

Ex Parte Joseph M. Rice

REQUEST FOR RECONSIDERATION

Appellant's letters received May 8,1972 and May 9, 1972, have been treated as a request for reconsideration of our decision mailed May 1, 1972.

Appellant contends that our decision should have been directed to the FIVE CLAIMS reproduced in his brief. As pointed out by the examiner in the answer, the amendment containing the additional claims had not been entered. We also note that appellant's notice of appeal, filed December 31, 1970, mentioned only claims 1 and 2.

NOTE:
See page 3 of this appendix for my letter of December 29th where I mentioned the five (5) new claims.

* * * * * * * * * * *

NOTE TO THE SUPREME COURT OF THE U.S.:
All correspondence and briefs from the first day of patent application of June 27, 1968, are in the files of this appellant. Any of the various correspondence may be called up for review to substantiate my assertion that my five new claims rightfully belon belong in the application. There can be no justice rendered if my entire application is not before the Court.

signed,
Joseph M. Rice

JOE RICE
W4RHZ
916 WESTERN AVENUE
COVINGTON, KY. 41011

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-152

JOSEPH M. RICE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Court of Customs and Patent Appeals affirmed the decision of the Patent Office rejecting petitioner's patent application claims on the grounds that they were anticipated by prior art (35 U.S.C. 102) and did not comply with the specificity requirement of the second paragraph of 35 U.S.C. 112. Petitioner contends that the court erred in so doing.

1. Petitioner filed a nine claim application for a patent on a stereophonic AM (amplitude modulated) transmitting and receiving system. The Patent Office examiner rejected the application as submitted but noted that three of the claims would be allowable if amended. Instead of following this recommendation,

petitioner requested that all nine claims be withdrawn and two new claims be substituted in their place.[1] The substitution was made. Subsequently, on September 18, 1970, the Patent Office rejected the claims on the grounds that they were anticipated by prior art (R. 16) and that they did not satisfy the specificity requirement of 35 U.S.C. 112; *viz.*, the claims "neither specify a method for arriving at a particular result nor do they define any apparatus to carry out the idea present" (R. 18). Petitioner then sought to amend his application with four new claims. His request was denied by the Assistant Commissioner of Patents because "[t]he proposed amendment was not accompanied by any showing of good and sufficient reasons why the amendment was necessary * * * as required by Rule 116(b) of the Patent Office Rules of Practice." The Assistant Commissioner also concluded that "the [new] * * * claims * * * did not * * * render the existing claims allowable or in better condition for appeal" (Brief for the Commissioner of Patents, App. A2—Letter of July 28, 1972).

The Board of Appeals affirmed (R. 53-56). It noted that " * * * claims 1 and 2, * * * are anticipated by any one of the patents to Kidd, Jenkins, and Van Der Muelen"

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[1]The claims are set forth on page 95 of the Transcript of Record in the court below. The reference "R." throughout this memorandum is to that Record. Copies of the record and the opinion of the Court of Customs and Patent Appeals are being lodged with the Clerk of this Court.

(R. 55). With respect to the specificity requirement, the Board stated (R. 54):

> Appellant does not claim a series of steps which form the method of his invention, nor does he claim the apparatus which he considers to be his invention. Rather, appellant appears to claim the *purpose* of his invention.

The Board granted a request for reconsideration to consider petitioner's assertion that his proposed amendment was wrongly excluded. The Board held that the amendment was not properly before it since it was not entered by the examiner and was not mentioned in the notice of appeal (R. 60).

The Board's decision was upheld by the Court of Customs and Patent Appeals, which ruled that the application was anticipated by prior art; *i.e.*, "Each reference discloses '[a] system of switching simultaneously a plurality of information such as is needed for the transmission and reception of stereo using the carrier itself for the synchronizing of the receiver with the transmitter,' as stated in the first portion of claim 1. * * * claim 2 also has not been shown to distinguish over the references" (Opinion p. 1). Moreover, the court held that the claims did not meet the specificity requirement as they failed "to particularly point out and distinctly claim the invention as required by the second paragraph of 35 U.S.C. 112" (Opinion, p. 2). Furthermore, the court determined that the "claims do not define appellant's invention in a manner that makes clear what subject matter they encompass, an essential requirement for meeting the provisions of

section 112. See *In re Hammack,* * * * 427 F. 2d 1384 * * * (CCPA 1970)" (Opinion, p. 3). Finally, the court concluded that "[t]he other claims, submitted by appellant after final rejection, are not before us because the board did not act on them and the Assistant Commissioner denied a petition for their entry in the application" (Opinion, p. 3).

2. Petitioner's main argument apparently is that the Patent Office erred in refusing to allow him to amend his application (Pet. 6-7, 8, 23). This assertion is without merit. Petitioner admits that the proposed amendment was sent to the Patent Office in December, 1970 (Pet. 5-6), *after* a final rejection by the examiner (decision of September 18, 1970). The refusal of an examiner to enter an amendment after final rejection is a matter of discretion (*Application of Mindick,* 371 F. 2d 892 (C.C.P.A.); 37 C.F.R. §1.116(b), and judicial review of such action may be had only in the district court, not the Court of Customs and Patent Appeals. *Application of Mindick, supra,* 371 F. 2d at 894; 35 U.S.C. 141, 145.

In addition, petitioner repeats his contention that the claims are not anticipated by prior art (Pet. 8-9, 11). In an attempt to distinguish his claims from the three references relied upon below, petitioner argues that the Patent Office did not understand his claim (Pet. 11, 13) and that the Patent Office misconstrued his use of the word "carrier" (Pet. 10, 25). This argument is also without merit. The Patent Office, the Board of Appeals, and the Court of Customs and Patent Appeals carefully considered petitioner's claims and unanimously concluded that he had failed to distinguish

his claims from the references. Indeed, as previously noted, the Court of Customs and Patent Appeals held:

> Each reference discloses "[a] system of switching simultaneously a plurality of information such as is needed for the transmission and reception of stereo using the carrier itself for the synchronizing of the receiver with the transmitter," as stated in the first portion of claim 1. * * * [C]laim 2 also has not been shown to distinguish over the references. [Opinion, p. 1.]

The findings set forth in the opinions below, upon which we rely, plainly establish that petitioner's claims were properly rejected as anticipated by prior art.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.

DOJ-1974-10